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In The

Supreme Court of the United States

October Term, 1974

No. 74-548

UNITED STATES OF AMERICA,
Appellant,

v.

STATE TAX COMMISSIONER OF THE STATE OF MISSISSIPPI, ET AL.,
Appellee.

AMICUS CURIAE BRIEF ON BEHALF OF THE COMMONWEALTH OF VIRGINIA

ANDREW P. MILLER
Attorney General of Virginia

ANTHONY F. TROY
Deputy Attorney General of Virginia
Supreme Court–State Library Building
Richmond, Virginia 23219

WILLIAM P. BAGWELL, JR.
Assistant Attorney General of Virginia
Post Office Box 27491
Richmond, Virginia 23261

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STATEMENT

This brief, sponsored by the Attorney General of Virginia, is filed pursuant to Rule 42 of the Court.

INTEREST OF AMICUS CURIAE

Virginia, like Mississippi, has adopted a comprehensive plan permitting a limited traffic in intoxicating liquors under strict controls. In Mississippi the State Tax Commission has been designated as the sole wholesale distributor, with the sole right to import and to sell at wholesale, including, at the discretion of the Commission, the right to

sell to "any retail distributors operating within any military post or qualified resort areas within the boundaries of the State . . ." Miss. Code 1972, § 67-1-41. The Commission elected to sell to the military and opened two channels of supply—military orders could be placed with the Commission, or directly with nonresident distillers, the orders in either case to include the State's markup, but to be exempt from all other State taxes. Regulation 25 of the Mississippi State Tax Commission. The Commission was directed to fix the amount of the various markups ". . . as in its discretion will be adequate to cover the cost of operation of the State wholesale liquor business, yield a reasonable profit, and be competitive with liquor prices in neighboring states." Miss. Code 1972, § 27-71-11. As to orders placed directly with distillers, the lower court found that the distillers were directed to prepay the markup to the Commission at the time of shipment to the military customer. *United States* v. *State Tax Commission of Mississippi*, 378 F.Supp. 558, 567 (1974).

As an integral part of the control plan, and perhaps the foundation upon which the entire plan rested, all traffic in intoxicating liquors was declared to be illegal except as authorized under the act, and liquor removed from the permitted channels was declared to be contraband. Miss. Code 1972, §§ 67-1-9, 67-1-17, 67-1-41, 67-1-45, 67-1-87.

Virginia is also a "monopoly" state and its control plan, found in Title 4 of the Code of Virginia (1950), as amended, bears many similarities to Mississippi's plan, including a provision that ". . . all alcoholic beverages . . . which are kept, stored, possessed, or in any manner used in violation of the provisions of this chapter . . . shall be deemed contraband . . ." Code of Virginia (1950), as amended, § 4-53. The Virginia Alcoholic Beverage Control Board operates government retail stores (*id.* § 4-28), and is authorized to sell alcoholic beverages to federal enclaves over which the United States has acquired jurisdiction at ". . . such discount prices as the Board may determine." *Id.* § 4-15(b). This Board has in fact made various proposals to the military which would enable the Government to purchase alcoholic beverages on a negotiated basis.[1] Such proposals have been completely ignored by the Government. Instead the Government insists on bypassing Virginia as a possible source from which to obtain alcoholic beverages and buys directly from the distiller. If the decision of the lower court is sustained, as Virginia contends it should be, Virginia will be assured of her right to alleviate any strain upon her control system, if she be so advised.

SUMMARY OF ARGUMENT

The proper approach to the problem presented by intoxicating liquor has been perplexing for centuries, and solutions satisfactory to all probably will never be found. Virginia believes that local, rather than national, control as has been developed over the years, is the proper and existing constitutional policy.

The Government presents arguments in the instant case based on Article I, Section 8, and Article VI of the Constitution (Brief for Appellant at 33-42), and also upon federal immunity from state taxation. *Id.* at 14. It reminds the Court that when a State's power to regulate alcoholic beverages collides with conflicting interests under the Constitution, " 'each must be considered in the light of the other.' " *Id.* at 25.

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[1] Appendix this brief at 1-5 which is a proposal made to representatives of armed services and Department of Defense in July, 1974.

In considering conflicts between the police power of the state with claims originating under the Constitution of the United States, the nature of the subject matter is important. Early decisions have designated intoxicating liquor as a source of danger to the community, as an article that may be declared to be contraband and not a proper article of commerce. Intoxicating liquor has been denominated as a fit subject for the exercise of the police power. Experience with different theories through the years establishes that local control offers better prospects for success than national control.

An examination of many of the cases, particularly those involving the Commerce Clause, marks out the boundaries of the police power of the states, and requires a decision that Mississippi's control plan is based on sound precedents, and survives the constitutional attack made on behalf of the Government. Virginia believes that it is yet true that a state has the power to bar absolutely any traffic in intoxicants, or to admit a limited traffic—whether interstate commerce is involved, whether the traffic is destined for a military reservation subject to exclusive federal jurisdiction, and whether the conflicting claims flow from Art. I, Section 8, or Art. VI of the Constitution, or from a claim of federal immunity from taxation.

ARGUMENT

I.

Earlier Cases Indicate The Special Nature Of The Traffic In Intoxicants And Some Of The Control Problems.

The special nature of the traffic in intoxicating liquors was long ago indicated in *Crowley* v. *Christensen,* 137 U.S.

86 (1890), a case in which San Francisco refused to issue a new retail liquor license under a city ordinance. The Court made these statements:

> "It is a question of public expedience and public morality, *and not of federal law.* The police power of the state is fully competent to regulate the business, to mitigate its evils, or to suppress it entirely. There is no inherent right in a citizen to thus sell intoxicating liquors by retail. It is not a privilege of a citizen of the state or of a citizen of the United States. *As it is a business attended with danger to the community,* it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils. *The manner and extent of regulation rest in the discretion of the governing authority . . . . It is a matter of legislative will only.*" 137 U.S. at 91. Emphasis added.

In *Crane* v. *Campbell,* 245 U.S. 304 (1917) the Court indicated that a person has no right, that a state may not abridge, to possess intoxicating liquor for his personal use, or to transport it within a state, reiterating that:

> "It must now be regarded as settled that on account of their *well-known noxious qualities and extraordinary evils . . . a state has power absolutely to prohibit* manufacture, gift, purchase, sale or *transportation of intoxicating liquors within its borders* without violating the guarantees of the Fourteenth Amendment . . . ." 245 U.S. at 307. Emphasis added.
>
> * * *
>
> "We further think it clearly follows from our numerous decisions upholding prohibition legislation that the right to hold intoxicating liquors for personal use is not one of those fundamental privileges of a citizen of the United States, which no state may abridge. *A Contrary view would be incompatible with the undoubted*

> *power to prevent manufacture, gift, sale, purchase or transportation of such articles—the only feasible ways of getting them. An assured right of possession would necessarily imply some adequate method to obtain not subject to destruction at the will of the state.*" 245 U.S. at 308. Emphasis added.

It is also clear that transportation over Mississippi's territory is the only feasible way of getting liquor into federal enclaves within Mississippi's boundaries. Can Mississippi make it illegal to possess or transport liquor within her boundaries—or can she legalize possession upon conditions? Does the military have any rights superior to Mississippi's in either event?

II

The Scope Of The Police Power Of The States Is Indicated By Decisions Resolving Many Previous Conflicting Constitutional Claims.

Over many years, this Court's interpretations of state laws with respect to intoxicating liquors have indicated that the Commerce Clause has little, if any, inhibiting effect. This Clause has been selected because it is relevant to this case, and because the Court has examined so many constitutional arguments predicated on this clause.

In 1932 West Virginia law prohibited the manufacture and keeping of intoxicants, with certain exceptions. One of the exceptions permitted a nonresident manufacturer to obtain a $50 permit as a "wholesale dealer," sales being deemed to be consummated in the county of delivery. In *McCormick & Co.* v. *Brown,* 286 U.S. 131 (1932), complainants had obtained federal permits for their products under the National Prohibition Acts,[2] and contended that

[2] Act of Oct. 28, 1919, ch. 85, 41 Stat. 305 and Act of Nov. 23, 1921, ch. 134, 42 Stat. 222.

they were not intoxicating liquors within the meaning of the Webb-Kenyon Act.[3] They further contended that the character of their products must be construed under the National Prohibition Act and that West Virginia could not declare that to be illegal for which a federal permit had been issued—particularly since the products were being sold in interstate commerce. The Court denied these contentions, and noted that there was no basis for objection because of "arbitrariness in the state's requirements" (286 U.S. at 139); that the purpose of the Webb-Kenyon Act was to prevent the "immunity characteristic of interstate commerce from being used" (286 U.S. at 140); that the Eighteenth Amendment and the National Prohibition Act did not supersede state prohibition acts which did not sanction what the constitutional amendment prohibits; and, finally, that state laws derived their force, not from the Eighteenth Amendment, but from the powers reserved by the states under the Tenth Amendment (286 U.S. at 141). As to the argument that there was no intent to violate West Virginia laws, the Court said:

> ". . . [T]he shipments of their products into the state for the purpose of consummating their sales without the described permits would fall directly within the terms of that act." 286 U.S. at 143.

In other words, the Court was saying that a departure from permitted channels would have stigmatized the shipment as illegal the moment it entered West Virginia territory—notwithstanding the Commerce Clause *or federal permits evidencing legality of the products.*

If Mississippi declared it illegal to possess liquor under any circumstances within the State, would a shipment of

[3] Act of March 1, 1913, ch. 90, 37 Stat. 699. The Webb-Kenyon Act, as amended, is still in effect (27 U.S.C. § 122).

liquor destined for a federal enclave in Mississippi be contraband under Mississippi law, or lawful under regulations issued by the Department of Defense as it entered the state? Would such a law be construed to be inoperative as to a shipment not intended for delivery or use in Mississippi?

In *State Board of Equalization of California* v. *Young's Market Co.*, 299 U.S. 59 (1936) this Court said:

> *"Can it be doubted that a state might establish a state monopoly of the manufacture and sale of beer, and either prohibit all competing importations, or discourage importation by laying a heavy impost, or channelize desired importations by confining them to a single consignee?*
>
> * * *
>
> "Moreover, in the light of history, we cannot say that the exaction of a *high license fee for importation* may not, like the imposition of the high license fees exacted for the privilege of selling at retail, *serve as an aid in policing the liquor traffic.*" 299 U.S. at 63. Emphasis added.

Young's Market indicates the propriety of a state monopoly. Mississippi's monopoly is predicated on her ability to act as the sole wholesaler, and the operation probably would not be financially feasible without the collection of a markup. The State Tax Commission was specifically directed to "cover the cost of operation." Instead of prohibiting liquor from going into federal enclaves entirely, cannot Mississippi permit it upon condition that the traffic bear a proportionate expense for using the transportation facilities and governmental services required? Can this Court say now, as it could not say in *Young's Market*, that the markup does not serve as an aid in policing traffic or that it is not an integral part of the comprehensive control plan of Mississippi?

The case of *Ziffrin* v. *Reeves*, 308 U.S. 132 (1939), indicates that many of the same principles obtain since the passage of the Twenty-first Amendment. Kentucky's control plan was examined with reference to its application to an Indiana contract carrier claiming the right to transport liquor from Kentucky to Chicago under the Federal Motor Carrier Act.[4] The Court noted that every phase of the liquor traffic was declared illegal unless definitely allowed, with the property becoming contraband upon failure to observe the numerous statutory requirements. Among these requirements was a tranporter's license, and upon denial of his application therefor appellant attacked the constitutionality of Kentucky's control laws.

This Court made the following statements:

> "The manifest purpose is to channelize the traffic, minimize the commonly attendant evils; *also to facilitate the collection of revenue.*" 308 U.S. at 134. Emphasis added.
>
> * * *
>
> "Having power absolutely to prohibit manufacture, sale, transportation, or possession of intoxicants, was it permissible for Kentucky to permit these things only under definitely prescribed conditions? Former opinions here make an affirmative answer imperative. *The greater power includes the less.*" 308 U.S. at 138. Emphasis added.
>
> * * *
>
> "Kentucky has seen fit to permit manufacture of whiskey only upon condition *that it be sold to an indicated class of customers* and transported in definitely specified ways. These conditions are not unreasonable and are clearly appropriate for effectuating the policy of limiting traffic in order to minimize well-

[4] Act of August 9, 1935, ch. 498, 49 Stat. 543.

known evils, *and secure payment of revenue.* The statute declares whiskey removed from permitted channels contraband subject to immediate seizure. This is within the police power of the state; *and property so circumstanced cannot be regarded as a proper article of commerce.*" 308 U.S. at 139. Emphasis added.

Has not Mississippi declared intoxicating liquor not to be a "proper article of commerce" unless the conditions are observed? Has not Mississippi defined an "indicated class of customers," to-wit, ". . . retail distributors operating within any military post . . . within the boundaries of the State . . ."? Miss. Code 1972, § 67-1-41.

Not only does the police power operate unfettered by the Commerce Clause upon out of state shipments destined for delivery within a state, but also it is validly operative upon interstate traffic through a state. Thus in *Carter* v. *Commonwealth of Virginia,* 321 U.S. 131 (1944), Virginia required, among other things, that an interstate shipment of liquor be confined to the most direct route, *that there be a lawful consignee,* that a permit be obtained, and that a penal bond conditioned upon lawful transportation be posted. A shipment of liquor from Maryland through Virginia into North Carolina was involved. This Court said:

> "The Act in question contains a comprehensive scheme for the control of trade in alcoholic beverages within the territory of Virginia."
>
> "It will be observed that the intoxicating liquors in question are intended for continuous shipment through Virginia, so that here, as in the *Duckworth* case a different question arises from those considered under the Twenty-first Amendment, where transportation or importation into a state for delivery or use therein was prohibited." 321 U.S. at 135.

* * *

> ". . . Whatever may be the effect of the Twenty-first Amendment, this record presents no problem that may not be resolved under the Commerce Clause alone . . . . *By interpretation of this Court the amendment has been held to relieve the states of the limitations of the Commerce Clause on their powers over such transportation or importation.*" 321 U.S. at 137. Emphasis added.

The interpretation seems uniformly to have been that the police power of a state with reference to a "business attended with danger to the community" is not diminished by the powers delegated to the United States—at least in the light of the Webb-Kenyon Act and the Twenty-first Amendment the interpretations have uniformly upheld the police power of a state with reference to the Commerce Clause. Thus, in his concurring opinion in *Carter* Mr. Justice Black said:

> "The Twenty-first Amendment has placed liquor in *a category different* from that of other articles of commerce. Though the precise amount of power it has left in Congress to regulate liquor under the Commerce Clause has not been marked out by decisions, *this much is settled; local, not national, regulation of the liquor traffic is now the general constitutional policy.*" 321 U.S. at 138. Emphasis added.

In his concurring opinion in *Carter* Mr. Justice Frankfurter noted that persons could not resort to Commerce Clause arguments to frustrate the right of a state to prohibit the traffic in liquor, nor would this Court take on the "impossible task of deciding, instead of leaving it for legislatures to decide, what constitutes a 'reasonable regulation' of the liquor traffic." 321 U.S. at 142. *Cf. Joseph E. Seagram & Sons, Inc.* v. *Hostetter,* 384 U.S. 35, 46-47 (1966).

In *Gordon* v. *State of Texas*, 355 U.S. 369 (1958), the opinion of the Texas Court[5] was affirmed in a *per curiam* opinion citing the *Carter* case. Gordon was traveling from Mexico via Texas to North Carolina with eleven bottles (one-fifth gallon each) of rum in his possession. Texas law imposed a tax *for the privilege of possessing liquor in the state*. Additionally it was unlawful to import more than one quart into Texas without a permit. Gordon's conviction for unlawful possession was affirmed, the lower court saying:

> "*Unless and until that tax was paid*, the rum was an illicit beverage, and contraband subject to be seized as such.
>
> This being true, the rum could not come under interstate commerce regulation. *As it was contraband, the right to possess and to transport it did not exist.*" 310 S.W. 2d at 330. Emphasis added.

Do the constitutional claims advanced by the Government embrace a right to possess and transport contraband through a state?

The case of *Duckworth* v. *Arkansas*, 314 U.S. 390 (1941) held that Arkansas had a right to require a permit from a truck transporting liquor in interstate commerce from Illinois to Mississippi, the Court saying:

> "A state may police 'caravans' of motor vehicles moving over its highways in interstate commerce *and charge a compensatory license fee* for doing it [Citing authority] It may in the interest of public safety and convenience, *restrict particular types of motor vehicles moving in interstate commerce to particular areas.*" 314 U.S. at 395. Emphasis added.

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[5] Reported at 310 S.W. 2d 328

Has not Mississippi, in effect, singled out an indicated class of customers and said that, as to this class, the mark-up is a tax on the privilege of possessing liquor in Mississippi?

III.

The Rights Of The Military Are Not Superior To The Police Power With Respect To Intoxicants.

Appellant argues that the markups imposed by the Mississippi regulation "are not designed to protect the health, welfare or morals of its citizens, but rather to raise revenue by taxing liquor sales to military facilities." Brief for Appellant at 27. On the same page, appellant refers to Congressional debates concerning the Twenty-first Amendment, pointing out a remark that the Amendment would be of financial advantage to the federal government, which could eliminate the "expense of enforcing prohibition while at the same time raising tax revenues on liquor." Is that part of a control plan designed to defray necessary governmental expenses incident thereto separable and unrelated to the exercise of the police power that makes the plan possible?

The Government's argument seems similar to that advanced in *Young's Market*, where plaintiffs argued that California's requirement of a license tax for the privilege of importing beer was unconstitutional. This Court rejected that contention, and said:

> "The plaintiffs argue that, despite the Amendment, a state may not regulate importations *except for the purpose of protecting the public health, safety or morals;* and that the importer's license fee was not designed to that end. Surely the state may adopt a lesser degree of regulation than total prohibition." 299 U.S. at 63. Emphasis added.

The Court proceeded to hold that it could not say that a high license fee for importation did not, like a license fee for selling at retail, serve as an aid in policing the liquor traffic, a statement previously quoted herein at p. 8.

In sustaining New York's "price warranty" law, as against Due Process and Equal Protection arguments, this Court, in *Joseph E. Seagram & Sons, Inc.* v. *Hostetter,* 384 U.S. 35, 46-47 (1966) stated:

> "Moreover, nothing in the Twenty-first Amendment or any other part of the Constitution requires that state laws regulating the liquor business be motivated exclusively by a desire to promote temperance. The announced purpose of the legislature was to eliminate 'discrimination against and disadvantage of consumers' in the State."

The "collection of revenue" was not a reprehensible nor proscribed part of Kentucky's control plan devised under the police power, as noted in *Ziffrin,* 308 U.S. at 134; nor was anything iniquitous found in Arkansas' "compensatory license fee" in *Duckworth,* 314 U.S. at 395. These are legitimate state interests.

Young's Market and *Ziffrin* stand for the proposition that a state can permit domestic manufacture of alcoholic beverages and exclude all other—or permit such other subject to conditions, such as an importation fee. *Gordon,* for example, stands for the proposition that a tax may be imposed on the privilege of possession—though the liquor is in interstate commerce and destined for another state. *Carter* stands for the proposition that interstate traffic through a state may be channelized and that a condition requiring a lawful consignee in the state of destination is not a law of extraterritorial effect but a law of the state imposing the condition.

Mississippi's law is not dependent upon extraterritorial effect. Mississippi's markup, and the associated control devices, are integral parts of a comprehensive plan designed to make Mississippi the only wholesaler "within the boundaries of the state," (Miss. Code 1972, § 67-1-41) therein channelizing the traffic. The entire plan was also designed, among other things, to "cover the cost of operation of the State wholesale liquor business." *Id.* § 27-71-11.

Mississippi's law singles out and describes a particular traffic—"retail distributors operating within any military post" (*Id.* § 67-1-41), whether wthin an enclave subject to exclusive or concurrent jurisdiction. Such retailers are given a choice of buying from the distillers or direct from the State Tax Commission. It was declared "unlawful for any person to . . . possess . . . transport . . . any alcoholic beverage except as authorized in this chapter." *Id.* § 67-1-9. Another statute also declares that "[i]t shall be unlawful for any person to have or possess either alcoholic beverages or personal property intended for use in violating the provisions of this chapter . . . No property rights shall exist in any such personal property or alcoholic beverages." *Id.* § 67-1-17. Under Mississippi law a shipment destined for a federal enclave, in a case where the markup had not been paid, would constitute an unlawful diversion from lawful channels at the time it entered the state, the tax operating upon the right to possess as it did in *Gordon.* The law has been designed to protect Mississippi's monopoly by plugging up holes through which liquor might come into the State, using Mississippi's transportation facilities and enjoying the use and protection of all governmental services required in policing the traffic, without contributing to the cost. The Court indicated in *Johnson* v. *Yellow Cab Transit Co.,* 321 U.S. 383, 386 (1944) that had Oklahoma's law been designed to "protect itself from illegal liquor diversions within

the area which Oklahoma has power to govern, the interpretation asked for might well be an acceptable one." Fort Sill was subject to the exclusive jurisdiction of the United States, and the shipment involved was destined for army personnel there. *Carter* and *Duckworth* were cited by the court in support of the above conclusion. Mississippi's law, it is submitted, is designed to prevent illegal diversion.

While this brief has emphasized decisions involving conflicts between the police power and Commerce Clause claims, it might be noted that Due Process and Equal Protection arguments have previously been rejected. *E.g., Mahoney* v. *Joseph Triner Corp.*, 304 U.S. 401 (1938); *Indianapolis Brewing Co.* v. *Liquor Control Comm.*, 305 U.S. 391 (1939); *Joseph S. Finch & Co.* v. *McKittrick*, 305 U.S. 395 (1939); *Joseph E. Seagram & Sons, Inc.* v. *Hostetter*, 384 U.S. 35 (1966). It is submitted that arguments respecting rights flowing from Art. I, § 8, cl. 17 of the Constitution, federal immunity from taxation, and federal supremacy under Art. VI of the Constitution should fare no better—all are based on parts of the same Constitution. The language of the Twenty-first Amendment bars the assertion of any such claims against the laws of the state, and the fact that some of the traffic is destined for federal enclaves subject to exclusive jurisdiction should be immaterial—Mississippi's law is not dependent upon extraterritorial effect, and, aside from the Buck Act, 61 Stat. 644-645, 4 U.S.C. 105-111, has no such effect.

As to the government's claim that Mississippi's law interferes with procurement policies, the argument seems to be based on the premise that there has been a radical change in the nature of intoxicating liquors—they are no longer "dangerous to the community," and have lost "well-known noxious qualities and extraordinary evils" as described in

Crowley and *Crane*, and are now impliedly necessary to the "morale and efficiency of the armed forces." Brief for Appellant at 28. One reading the account of the conditions existing in a sister state, as depicted by this Court in *California* v. *LaRue*, 409 U.S. 109 (1972), might well doubt that there has been any significant change in either human nature or in the intrinsic characteristics of intoxicating liquor. The argument ignores the fact that the Twenty-first Amendment was made a part of the same Constitution from which the claimed powers must stem—and at a later date. The argument ignores the consistent interpretations of this Court through the years, and the consistent position of Congress as indicated by the Webb-Kenyon Act, 27 U.S.C. § 122, and the Assimilative Crimes Act, 18 U.S.C. § 13. It ignores the fact that the sovereign states delegated powers to a federal government—that the states derive no power from the Constitution. The Twenty-first Amendment makes it clear, however, as this Court has consistently held, that the police power of the states ought not to be frustrated by constitutional claims in the field of intoxicating liquors. The following statement made by this Court in *LaRue*, 409 U.S. at 114, has considerable relevancy to this case:

> "While the States, vested as they are with general police power, require no specific grant of authority in the Federal Constitution to legislate with respect to matters traditionally within the scope of the police power, the broad sweep of the Twenty-first Amendment has been recognized as conferring something more than the normal state authority over public health, welfare and morals." Cf. *McCormick & Co.* v. *Brown, supra*, 286 U.S. at 141.

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA
Amicus Curiae
By Counsel

ANDREW P. MILLER
Attorney General of Virginia

ANTHONY F. TROY
Deputy Attorney General of Virginia
Supreme Court–State Library Building
Richmond, Virginia 23219

WILLIAM P. BAGWELL, JR.
Assistant Attorney General of Virginia
Post Office Box 27491
Richmond, Virginia 23261

APPENDIX

PROPOSAL FOR THE VIRGINIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL TO SUPPLY MERCHANDISE FOR RESALE TO MILITARY INSTALLATIONS

I.

Background Of Virginia Alcoholic Beverage Control

The Virginia Alcoholic Beverage Control Board was established in 1934 with the purpose of controlling the possession, sale, transportation and delivery of alcoholic beverages within the Commonwealth of Virginia. Over the last forty years, the system has grown to the point where there are now 250 retail outlets dispersing throughout the State with sales approaching $200 million a year. The Department owns and operates a central warehouse in Richmond, from which a private contract carrier distributes merchandise to the retail outlets on a weekly basis. Over the last several years, the Department has developd a keen awareness of the need for proper management controls. Substantial progrss has been made in providing extended service to the citizens of Virginia, while minimizing increases in operating expenses. The Department has acquired over the last forty years, both on a statewide and a national level, a reputation of functioning in an open and frank manner—free of corruption or graft that is sometimes inherent in this type of operation.

II.

Preliminary Proposal

The Virginia Department of Alcoholic Beverage Control will supply distilled spirits for resale on military reservations under the following conditions:

1) The package stores involved will receive weekly or

semi-monthly shipments via the private carrier contracted by the Department;

2) the military installations will be allowed to purchase goods at a discount price (no State tax and at a less than standard markup figure).

3) the military installations will have access to the forecasting and inventory control techniques recently developed by the Department;

4) the Department will primarily supply those brands and sizes now stocked by the Department. Under some circumstances if the demand is sufficient, the Department will stock special military brands;

5) the military installation will be billed for each shipment and payment must be within 15 days.

III.

Services Which Could Be Provided To Military Installations

A. Inventory Control

The Department has recently developed an elaborate inventory management system. This system is designed to direct management in the proper procurement and management of inventory levels and to forecast needs for the entire system, as well as on an individual retail outlet level. The system requires minimal input on the part of the retail outlets. The "IMAC" system assures a minimum dollar investment in inventory while providing a highly acceptable service level to customers.

B. Efficient Ordering and Delivery Services.

The delivery of merchandise to retail outlets is now handled by a private contract carrier on a weekly, and in some cases, twice a month basis. This delivery method has been proven to be highly reliable and only in extreme weather conditions has there been any significant deviation from the planned schedule.

C. Availability of Brands

Since the Department has such a large investment in inventory, it can afford to pre-buy items if there is some anticipated problem evolving. Strikes, material shortages, and major price increases can be anticipated and their negative effect diminished. Also the awareness of new products on the market, is very keen due to our constant contact with distiller representatives. Large purchasers, such as the Department, are often given priority to new or limited products.

D. Variety of Products Offered

The Department presently stocks 800 different codes—which translates into 304 different brands of distilled spirits and 173 different brands of foreign and domestic wine. The Department makes a periodic review of the brands and sizes carried on its inventory list and makes adjustments whenever necessary. The Department could expand its present offerings of brands of military special items if sufficient demand exists. The Department keeps constantly abreast of the introduction of new products and the change in purchasing habits as reported by a variety of industry publications and through trade organizations in the industry.

E. Profitability

Individual military installations pay more for the same product than does the Virginia Department of Alcoholic Beverage Control. This is understandable since the Department purchases in large quantities, taking advantage of discounts and benefits from lower transportation costs. Secondly, the Department does not allow a distiller to change his wholesale prices more frequently than four times a year. The Department will attempt to provide merchandise at a reasonable price, minimizing the negative impact on an installation's present margin of profit.

F. Sound Procurement

An intangible benefit would be realized by placing a volatile function outside of the handling of any one small group of people. The Commonwealth of Virginia has established a highly satisfactory and reputable record in the area of procurement. In the forty years of its existence, there has been no hint of graft, favoritism, or corruption in the procurement and management of inventory.

G. Quality Control

In order to ensure that consumers are getting a quality, unadulterated product, the Department periodically has chemical analyses performed on existing brands. All new products before their introduction to the market, must be qualitatively tested to ensure the protection of its consumers. Over the years, there have been a significant number of incidences where adulterated products have been detected before they were distributed for sale.

IV.

Conclusions

The Virginia Alcoholic Beverage Control Department can provide services and benefits to the State's military establishments that probably are not available from other sources. In addition, it is felt the working relationships established upon acceptance of this proposal should be mutually beneficial to all participants.

It is hoped, therefore, this preliminary proposal will be favorably accepted. Then, the necessary detailed study of the military needs can be started immediately so a final proposal can be prepared.